

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No.
Petitioner	:	
	:	
v.	:	Board Case No.:
	:	05-CA-153220
ANTHONY AND ASSOCIATES, INC.	:	
	:	
Respondent	:	

APPLICATION FOR SUMMARY ENTRY OF A JUDGMENT
ENFORCING A SUPPLEMENTAL ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Fourth Circuit:

The National Labor Relations Board (the “Board”), pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e)), applies to this Court for summary entry of a judgment enforcing its Supplemental Order against Anthony and Associates, Inc. (Respondent). The Board is entitled to summary enforcement of its Supplemental Order because Respondent failed to file with the Board exceptions to the administrative law judge’s decision. In support, the Board shows:

A. Jurisdiction of this Court

This Court has jurisdiction over this application under Section 10(e) of the Act (29 U.S.C. § 160(e)). Venue is proper in this Circuit because the unfair labor

practices occurred in Maryland. The Board's final order issued on September 29, 2017.

B. Proceedings Before the Board

1. The underlying violations were brought before the Court by the Board's application for enforcement of its June 30, 2016, Decision and Order. That order directed Respondent Anthony and Associates, Inc., in part, to make whole a certain employee for any loss of earnings and benefits suffered by reason of the discrimination against her. The Court entered its judgment and mandate enforcing the Board's Order in full in No. 16-1919 on September 14, 2016.

2. A controversy having arisen over the amount of backpay due under the terms of the Board's order, the Regional Director issued a compliance specification and amended compliance specification alleging the amount of backpay due under the Board's Order.

3. Following a supplemental proceeding before Administrative Law Judge Michael A. Rosas, the judge issued a decision on August 18, 2017, fixing the amount the amount of backpay due under the Board's initial Order.

4. On August 18, 2017, the Board issued an order transferring the proceeding to the Board and notifying Respondent that the Board must receive exceptions to the administrative law judge's decision by September 15, 2017.

5. Section 10(c) of the Act (29 U.S.C. § 160(c)) provides that "if no

exceptions are filed [with the Board] within twenty days after service [of the administrative law judge's decision] upon the parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed." Section 102.46 and 102.48 of the Board's Rules and Regulations (29 C.F.R. 102.46 and 102.48) implement this provision and provide that, in the event no exceptions are filed within 28 days, the decision of the administrative law judge shall be adopted by the Board and all objections and exceptions thereto are waived for all purposes.

6. Respondent did not file exceptions with the Board.

7. In the absence of any exceptions to the administrative law judge's decision, on September 29, 2017, the Board issued an order adopting the Administrative Law Judge's findings and conclusions, and directing Respondent to take the action set forth in the recommended Supplemental Order of the Administrative Law Judge.

C. The Board Is Entitled to Summary Enforcement of Its Order

The Board is entitled to summary entry of a judgment enforcing its order because, by failing to file exceptions with the Board challenging the administrative law judge's decision, the Respondent failed to raise any issues before the Board. Section 10(e) of the Act (29 U.S.C. § 160(e)) provides that "no objection that has not been urged before the Board . . . shall be considered by the court, unless the

failure or neglect to urge such objection shall be excused by extraordinary circumstances.” This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982). Interpreting this requirement, this Court and other circuits have consistently held that a respondent’s failure to file any exceptions before the Board entitles the Board, absent extraordinary circumstances, to summary entry of a judgment enforcing its order. *NLRB v. Pugh & Barr, Inc.*, 194 F.2d 217, 218-21 (4th Cir. 1952). *Accord, e.g., NLRB v. Tri-State Warehouse & Distrib.*, 677 F.2d 31, 31 (6th Cir. 1982); *NLRB v. Int’l Union of Operating Eng’rs, Local 86*, 357 F.2d 841, 846-47 (3d Cir. 1966). No extraordinary circumstances are present here.

WHEREFORE, the Board respectfully requests that the Court take jurisdiction of the proceedings, serve notice of the filing of this application upon Respondent, and enter judgment summarily enforcing the Board’s order in full. A proposed judgment is attached.

/s/ Linda Dreeben

Linda Dreeben

Deputy Associate General Counsel

NATIONAL LABOR RELATIONS BOARD

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Dated in Washington, D.C.
this 8th day of November, 2017